



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 01 फरवरी, 2021/12 माघ, 1942

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 24th December, 2020

No. Shram(A) 6-2/2020 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding

208—राजपत्र / 2021-01-02-2021 (7017)

Officer, Labour Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	139/19	Rajesh Kumar	M/s Kailash Print Media	09-10-2020
2.	128/19	Deepak Kumar	-do-	09-10-2020
3.	141/19	Tarlok Chand	-do-	09-10-2020
4.	137/19	Pawan Kumar	-do-	09-10-2020
5.	129/19	Piar Chand	-do-	09-10-2020
6.	134/19	Anjna Kumari	-do-	09-10-2020
7.	310/14	Raj Mal	E.E. HPPWD, Joginder Nagar	05-10-2020
8.	311/14	Guddi Devi	E.E. HPPWD, Joginder Nagar	06-10-2020
9.	370/14	Vinod Kumar	E.E. B&R HPPWD, Joginder Nagar	07-10-2020
10.	21/15	Pyar Chand	E.E. B&R HPPWD, Joginder Nagar	08-10-2020
11.	244/16	Anil Kumar	M.D. M/s, GVK Solan, H.P. & other	26-10-2020
12.	114/16	Om Prakash	M.D. M/s, GVK Solan, H.P. & other	26-10-2020
13.	75/20	Mansha Ram	M/s TR Enterprises, Bilaspur	28-10-2020
14.	03/18	Savitri Devi	Principal, DAV School, Una	28-10-2020
15.	37/17	Pawan Kumar	C.S.K. HP KVV Palampur	29-10-2020
16.	89/20	Sumit Singh	M/s Tigaksha Metallica Gagret Una	29-10-2020
17.	90/20	Vikas Thakur	M/s Tigaksha Metallica Gagret Una	29-10-2020
18.	45/20	Mohammad Aslam Khan	M/s Cosilight Una	29-10-2020

By order,
KAMLESH KUMAR PANT, IAS
Principal Secretary (Lab. & Emp.).

BEFORE THE e-LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Rajesh Kumar s/o Sh. Surender Kumar
r/o village Khainda, P.O. Jhanyara, Tehsil & District
Hamirpur, H.P.

Respondent : M/s Kailash Print Media Pvt. Ltd., Office at
village Sasan, P.O. Jhanyari, Tehsil & District
Hamirpur, H.P.

Number of proceedings of the
Labour Court-cum-Industrial
Tribunal, Dharamshala : 139/2019

Present:—

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the e-Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

Today a separate statement was made by Shri Ravinder Aggarwal, authorized representative for the petitioner before the Bench of e-Lok Adalat that the matter stands amicably settled between the parties and that he has been authorized by the petitioner to withdraw this reference. This settlement is found not opposed to public policy or against any provisions of law. The Bench of e-Lok Adalat today on the day of e-Lok Adalat through a digital means *i.e.* by making a video call to the petitioner on his mobile no. 95019-22764 from mobile No. 94593-25669 of Shri Sunit Sharma, an official of this Court verified the fact regarding settlement from the petitioner. He accepted the settlement and consented to the withdrawal this petition by his Authorized Representative.

Accordingly, the present reference is hereby withdrawn as compromised. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner : Sh. Ravinder Aggarwal, AR

Respondent : Sh. Anand Sharma, Adv.

Judicial Officer Member

Date: 09.10.2020

**BEFORE THE e-LOK ADALAT
HELD AT DHARAMSHALA**

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Deepak Kumar s/o Sh. Mehar Chand, r/o
VPO Muhal, Tehsil Dehra, District Kangra, H.P.

Respondent : M/s Kailash Print Media Pvt. Ltd., Office at
Village Sasan, P.O. Jhanyari, Tehsil & District
Hamirpur, H.P.

Number of proceedings of the
Labour Court-cum-Industrial
Tribunal, Dharamshala : 128/2019

Present:—

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the e-Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

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Petitioner : Sh. Ravinder Aggarwal, AR

Respondent : Sh. Anand Sharma, Adv.

Judicial Officer

Member

Date: 09.10.2020

**BEFORE THE e-LOK ADALAT
HELD AT DHARAMSHALA**

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Tarlok Chand s/o Sh. Yog Raj, r/o village
Swahal, P.O. Mohin, Tehsil & District Hamirpur, H.P.

Respondent : M/s Kailash Print Media Pvt. Ltd., Office at
Village Sasan, P.O. Jhanyari, Tehsil & District Hamirpur, H.P.

Number of proceedings of the
Labour Court-cum-Industrial
Tribunal, Dharamshala : 141/2019

Present:—

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the e-Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

Today a separate statement was made by Shri Ravinder Aggarwal, authorized representative for the petitioner before the Bench of e-Lok Adalat that the matter stands amicably settled between the parties and that he has been authorized by the petitioner to withdraw this reference. This settlement is found not opposed to public policy or against any provisions of law. The Bench of e-Lok Adalat today on the day of e-Lok Adalat through a digital means *i.e.* by making a video call to the petitioner on his mobile No. 95019-22764 from mobile No. 94593-25669 of Shri Sunit Sharma, an official of this Court verified the fact regarding settlement from the petitioner. He accepted the settlement and consented to the withdrawal this petition by his Authorized Representative.

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The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner : Sh. Ravinder Aggarwal, AR

Respondent : Sh. Anand Sharma, Adv.

Judicial Officer

Member

Date: 09.10.2020

**BEFORE THE e-LOK ADALAT
HELD AT DHARAMSHALA**

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)].

Applicant : Sh. Pawan Kumar s/o Sh. Raju Ram, r/o VPO
Jakhyol, Tehsil Bhoranj, District Hamirpur,
H.P.

Respondent : M/s Kailash Print Media Pvt. Ltd., Office at
village Sasan, P.O. Jhanyari, Tehsil & District
Hamirpur, H.P.

Number of proceedings of the
Labour Court-cum-Industrial
Tribunal, Dharamshala : 137/2019

Present:-

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the e-Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

Today a separate statement was made by Shri Ravinder Aggarwal, authorized representative for the petitioner before the Bench of e-Lok Adalat that the matter stands amicably settled between the parties and that he has been authorized by the petitioner to withdraw this reference. This settlement is found not opposed to public policy or against any provisions of law. The Bench of e-Lok Adalat today on the day of e-Lok Adalat through a digital means *i.e.* by making a video call to the petitioner on his mobile No. 95019-22764 from mobile No. 94593-25669 of Shri Sunit Sharma, an official of this Court verified the fact regarding settlement from the petitioner. He accepted the settlement and consented to the withdrawal this petition by his Authorized Representative.

Accordingly, the present reference is hereby withdrawn as compromised. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner : Sh. Ravinder Aggarwal, AR

Respondent : Sh. Anand Sharma, Adv.

Judicial Officer

Member

Date: 09.10.2020

**BEFORE THE e-LOK ADALAT
HELD AT DHARAMSHALA**

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Piar Chand s/o Sh. Kangru Ram, r/o
Village Rakkar, P.O. Putrial, Tehsil Nadaun,
District Hamirpur, H.P.

Respondent : M/s Kailash Print Media Pvt. Ltd., Office at
village Sasan, P.O. Jhanyari, Tehsil & District Hamirpur, H.P.

Number of proceedings of the
Labour Court-cum-Industrial
Tribunal, Dharamshala : 129/2019

Present:—

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the e-Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

Today a separate statement was made by Shri Ravinder Aggarwal, authorized representative for the petitioner before the Bench of e-Lok Adalat that the matter stands amicably settled between the parties and that he has been authorized by the petitioner to withdraw this reference. This settlement is found not opposed to public policy or against any provisions of law. The Bench of e-Lok Adalat today on the day of e-Lok Adalat through a digital means *i.e.* by making a video call to the petitioner on his mobile No. 95019-22764 from mobile No. 94593-25669 of Shri Sunit Sharma, an official of this Court verified the fact regarding settlement from the petitioner. He accepted the settlement and consented to the withdrawal this petition by his Authorized Representative.

Accordingly, the present reference is hereby withdrawn as compromised. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner : Sh. Ravinder Aggarwal, AR

Respondent : Sh. Anand Sharma, Adv.

Judicial Officer

Member

Date: 09.10.2020

**BEFORE THE e-LOK ADALAT
HELD AT DHARAMSHALA**

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Miss Anjna Kumari d/o Sh. Hari Singh, r/o
village Seu, P.O. Kharwar, Tehsil Bhoranj,
District Hamirpur, H.P.

Respondent : M/s Kailash Print Media Pvt. Ltd., Office at
village Sasan, P.O. Jhanyari, Tehsil & District
Hamirpur, H.P.

Number of proceedings of the
Labour Court-cum-Industrial
Tribunal, Dharamshala : 134/2019

Present:—

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the e-Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

Today a separate statement was made by Shri Ravinder Aggarwal, authorized representative for the petitioner before the Bench of e-Lok Adalat that the matter stands amicably settled between the parties and that she has been authorized by the petitioner to withdraw this reference. This settlement is found not opposed to public policy or against any provisions of law. The Bench of e-Lok Adalat today on the day of e-Lok Adalat through a digital means *i.e.* by making a video call to the petitioner on her mobile No. 95019-22764 from mobile No. 94593-25669 of Shri Sunit Sharma, an official of this Court verified the fact regarding settlement from the petitioner. She accepted the settlement and consented to the withdrawal this petition by her Authorized Representative.

Accordingly, the present reference is hereby withdrawn as compromised. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner : Sh. Ravinder Aggarwal, AR

Respondent : Sh. Anand Sharma, Adv.

Judicial Officer

Member

Date: 09.10.2020

**IN THE COURT OF SHRIYOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 310/2014

Date of Institution : 18.10.2014

Date of Decision : 05.10.2020

Shri Raj Mal s/o Shri Bajiru Ram, r/o Village Delhar, P.O. Sainthal, Tehsil Joginder Nagar,
District Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D., Joginder Nagar, District Mandi,
H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Raj Mal, s/o Shri Bajiru Ram, r/o Village Delhar, P.O. Sainthal, Tehsil Joginder Nagar, District Mandi, H.P. during March, 2001 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. The case of the petitioner as set out in the statement of claim is that his services were engaged by the respondent in B&R Sub Division No. II, HPPWD Joginder Nagar, District Mandi, H.P. *w.e.f.* March, 2001 on muster-roll and that he had worked under the Assistant Engineer, HPPWD, Sub Division No. II, Joginder Nagar. No appointment letter was ever given to him at the time of his appointment. The muster rolls were issued to the petitioner only for 15, 18 and 20 days in a month. The respondent had given fictional breaks to the petitioner from time to time from the date of his initial engagement upto 31.8.2007. Thereafter, the services of the petitioner have been engaged continuously by the respondent. A pick and choose policy was adopted by the respondent, as some junior workers were engaged continuously, whereas the seniors, like the petitioner, were being engaged with fictional breaks to deprive them of the permanent status as per Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The principle of ‘last come first go’ was not adhered to by the respondent and persons, namely, S/Sh./Smt. Rajnder Singh, Subhash Chand, Sumer Singh, Sanjeev Kumar, Gudi Devi, Prithi Pal, Rajinder Pal, Dalip Singh, Gautam Ram, Bhawani, Ram and Ram Dhan were engaged without giving them any fictional breaks. The act of the respondent was wrong, illegal and against the provisions of Sections 25-G and 25-H of the Act. The petitioner has continuously worked *w.e.f.* March, 2001 and has

completed eight years of continuous service on 31.3.2009. As per the policy of the State Government, he is entitled for regularization *w.e.f.* 1.4.2009. Hence, the petition.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that the petition was bad for non joinder of necessary parties and also on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the services of the petitioner were engaged in March, 2001. The petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. The respondent's office was created in the month of January, 2004 *vide* notification dated 9th December, 2003. The office started functioning *w.e.f.* 2nd January, 2004 and after the creation of the respondent's office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It is denied that fictional breaks were given to the petitioner by the respondent upto the year 2007. Rather, the services of the petitioner were engaged as per the availability of work and funds and on his oral requests from time to time. The respondent had been providing work to the petitioner for the whole month. Hence, it was prayed that the petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 02.01.2020:

1. Whether time to time termination of services of the petitioner during March, 2001 to 31-08-2007 by the respondent is illegal and unjustified, as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*
4. Whether the claim petition is bad for non joinder of the necessary parties, as alleged? . . .*OPR.*
5. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3	: No
Issue No. 4	: Not pressed
Issue No. 5	: No
Relief	: Petition is allowed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The short and simple case of the petitioner is that the respondent had been resorting to giving fictional breaks from the very inception upto 31.8.2007, as only muster rolls for 15 to 20 days were issued to him.

11. In this regard Sh. Raj Mal (petitioner) stepped into the witness box as PW1. He in his affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure has deposed that the respondent had engaged him since March, 2001 on muster rolls, but they were issued only for 15 to 20 days. The said process continued till 31.8.2007.

12. Conversely, Shri B.S. Thakur, Executive Engineer, Joginder Nagar (respondent) testified as RW1. He placed on record copy of office order as Ex. RW1/B, copy of notification as Ex. RW1/C and copy of year-wise mandays chart of the petitioner as Ex. RW1/D. In his cross-examination, he denied that fictional breaks were given to the petitioner by the department from the year 2001 upto the year 2007. Volunteered that, the petitioner himself had not been coming to work. However, he admitted that there was no correspondence of the department with the petitioner regarding his not reporting for work. He also admitted that Ex. PW1/B is a document of their department, which reflects names of some of the workers. He was not aware that any junior to the petitioner had been engaged regularly. He admitted that as per Ex. PW1/E, Smt. Ruma Devi was also working in their department. Further, he admitted that as per Ex. PW1/F, Smt. Ruma Devi has been regularized. He cannot say that the petitioner is entitled for regularization from the year 2008.

13. There is no denial of the fact that Reference No. 304/2014 titled as Smt. Ruma Devi vs. The Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar, District Mandi, H.P. was decided by this Court/Tribunal on 28.7.2015. While deciding the said reference, it was held by this Court/Tribunal that the workman therein was in continuous service with the respondent from her respective date of engagement and the breaks which were given to her by the respondent being fictional in nature shall have no effect on her seniority and continuity of service. Manifest that it is not in one odd case, but in the case of a number of workmen that such procedure had been adopted by the respondent. Why, how and under what circumstances the muster rolls were issued only for 15 to 20 days to the workman has not been clearly spelt out by the respondent either in his pleadings or in the evidence. It is the version of the respondent that the work was made available to the petitioner as per the requirement of work and availability of funds. There is no cogent, convincing, strong and reliable evidence on record to substantiate this plea, except for the self serving testimony of the respondent.

14. On the other hand, the mandays chart of ten workmen Ex. PW1/B shows that

workmen, namely, Shri Prithi Pal Singh was engaged in October, 2001, Shri Ravinder Kumar in December, 2001, Shri Dalip Singh in July, 2002, Shri Gautam Ram in April, 2002, and Shri Ram Dhan in February, 2003. Their names figure at serial Nos. 6, 7, 8, 9 and 11 in Ex. PW1/B. A perusal of Ex. PW1/B shows that all the aforesaid workmen were being offered muster rolls for a full month. Admittedly, even these workmen are employed in B&R Division HPPWD, Joginder Nagar. The respondent while appearing as RW1 has not clarified as to why all the above-named workmen, who were junior to the petitioner, were not being given any breaks. Indisputably, the nature of job of all these workmen was similar to that of the petitioner. Why the petitioner, who admittedly was senior to the aforesaid workmen, was not granted the muster rolls for the entire month from the year 2001 upto 31.8.2007, has neither been explained nor there seems to be any plausible reason for the same. As discussed above, the reasons to that effect being obscure only go to show that the story put forth by the respondent that as adequate work and funds were not available, the petitioner was not being granted the muster rolls for the entire month is incorrect. After August, 2007 the respondent had started giving muster roll for the entire month to the petitioner, as is evident from the substantive evidence of the petitioner. He continued working uninterruptedly but only for 15 to 20 days in a month right from the year 2001 till 31.8.2007. Certain similarly situated persons, however, continued to be granted full muster roll. The respondent was either resorting to favouritism or acting in a partisan manner to the petitioner or was simply resorting to such process with an object of depriving him of the status and privileges of a permanent workman, entitling him to regularization as per the policy of the State Government. It is an act of gross discrimination which is *ex-facie* borne out from the record. There can be no two opinions about it. Mere glance at the record highlights the glaring discrepancy and discrimination perpetuated by the respondent.

15. The aforesaid act of the respondent, as discussed above, is not only an 'unfair labour' practice as per the provisions of the Section 2(ra) of the Act, but is also against the provisions of Section 25-B of the Act, which stipulates that the workman shall be in 'continuous service', except

because of an interruption on account of sickness authorized leave, accident, strike, which is illegal or lock out and the cessation of work which is not due to any fault on the part of the workman. The action of the respondent in not intentionally issuing muster roll for the entire month to the petitioner was not due to any fault of the petitioner. The cessation of work was caused due to the arbitrary and discriminatory attitude of the respondent. Therefore, it has to be presumed that the workman *i.e.* petitioner was in 'continuous service'. He continued serving the respondent uninterruptedly from the month of March, 2001. The sole inference which can be drawn from the entire circumstances as discussed above is that the action of the respondent in giving fictional breaks to the petitioner and in the process disengaging him after 15 to 20 days every month from the month of March, 2001 till 31.8.2007 was illegal and against the provisions of the Act.

16. The upshot is that the petitioner was in continuous uninterrupted service with the respondent from the month of March, 2001 till 31.8.2007. The breaks given to him by the respondent were fictional in nature and they shall have no effect on his seniority and continuity in service. His seniority shall be reckoned from the month of March, 2001.

17. These issues under discussion are accordingly decided in favour of the petitioner and against the respondent.

Issue No. 3 :

18. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the relief(s) the petitioner is found entitled to. Even

otherwise, nothing has been brought to my notice by the respondent to show as to how the reference is not maintainable. The issue under discussion is accordingly decided against the respondent and in favour of the petitioner.

Issue No. 4 :

19. Not pressed.

Issue No. 5 :

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue under discussion is decided in favour of the petitioner and against the respondent.

Relief :

22. As a sequel to my findings on issues above, the instant claim petition succeeds and the same is allowed. It is held that the petitioner was in continuous uninterrupted service with the respondent from the month of March, 2001 upto 31.8.2007. The breaks given by the respondent to the petitioner from the month of March, 2001 upto 31.8.2007 were artificial/fictional in nature. This period of fictional breaks is ordered to be counted for the purpose of continuous service, except back wages. His seniority shall be reckoned from the month of March, 2001. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of October, 2020.

Sd/-

(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRIYOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 311/2014

Date of Institution : 18.10.2014

Date of Decision : 06.10.2020

Smt. Guddi Devi w/o Shri Nihal Singh, r/o Village Raja, P.O. Tramat, Tehsil Joginder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
..Respondent .

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Guddi Devi, w/o Shri Nihal Singh, r/o Village Raja, P.O. Tramat, Tehsil Joginder Nagar, District Mandi, H.P. during January, 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. The case of the petitioner as set out in the statement of claim is that her services were engaged by the respondent as a daily waged beldar on muster-roll basis *w.e.f.* January, 1999 and that she had worked under Assistant Engineer, HPPWD, Sub Division B&R Joginder Nagar. No appointment letter was ever given to her at the time of her appointment. The muster rolls were issued to the petitioner only for 15, 18 and 20 days in a month. The respondent had given fictional breaks to the petitioner from time to time from the date of her initial engagement upto 31.8.2007. Thereafter, the services of the petitioner have been engaged continuously by the respondent. A pick and choose policy was adopted by the respondent, as some junior workers were engaged continuously, whereas the seniors, like the petitioner, were being engaged with fictional breaks to deprive them of the permanent status as per Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The principle of ‘last come first go’ was not adhered to by the respondent and persons, namely, S/Sh./Smt. Sanjeev Kumar, Guddi Devi w/o Sh. Mahal Chand, Prithi Paul, Rajinder Paul, Dalip Singh, Gautam Ram, Bhawani Ram and Ram Dhan were engaged without giving them any fictional breaks. The act of the respondent was wrong, illegal and against the provisions of Sections 25-G and 25-H of the Act. Shri Sanjeev Kumar workman, who is junior to the petitioner had been regularized on 29.11.2008, whereas her services have only been regularized by the respondent on 19.8.2015. She is entitled for regularization from the date of the regularization of her junior with other consequential benefits. Hence, the petition.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that the petition was bad for non joinder of necessary parties and also on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the services of the petitioner were engaged in January, 1999. The petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. The respondent’s office was created in the month of January, 2004 *vide* notification dated 9th December, 2003. The office started functioning *w.e.f.* 2nd January, 2004 and after the creation of the respondent’s office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner

prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It is denied that fictional breaks were given to the petitioner by the respondent upto the year 2007. Rather, the services of the petitioner were engaged as per the availability of work and funds. The petitioner had not completed 240 days in any calendar year upto the year 2007. Since the year 2008 she has worked with a minimum of 240 days in each calendar year and had completed eight years of continuous service as on 31.12.2014. Her services have been regularized *vide* order dated 19.8.2015. It is specifically denied that the respondent had regularized similar situated persons by ignoring the petitioner. Hence, it was prayed that the petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 11.12.2019:

1. Whether time to time termination of the services of petitioner during January, 1999 to 31-08-2007 by the respondent is illegal and unjustified, as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.
4. Whether the claim petition is bad for non-joinder of parties, as alleged? . . .*OPR*.
5. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR*.

Relief:

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|-------------|---------------|
| Issue No. 1 | : Yes |
| Issue No. 2 | : Discussed |
| Issue No. 3 | : No |
| Issue No. 4 | : Not pressed |
| Issue No. 5 | : No |

Relief : Petition is allowed as per the operative portion of the Award.

REASONS FOR FINDINGS*Issues No. 1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The short and simple case of the petitioner is that the respondent had been resorting to giving fictional breaks from the very inception upto 31.8.2007, as only muster rolls for 15 to 20 days were issued to her.

11. In this regard Smt. Guddi Devi (petitioner) stepped into the witness box as PW1. She in her affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure has deposed that the respondent had engaged her since January, 1999 on muster rolls, but they were issued only for 15 to 20 days. The said process continued till 31.8.2007.

12. Conversely, Shri B.S. Thakur, Executive Engineer, Joginder Nagar (respondent) testified as RW1. He placed on record copy of office order as Ex. RW1/B, copy of notification as Ex. RW1/C, copy of year-wise working days of the petitioner as Ex. RW1/D and copy of office order as Ex. RW1/E. In his cross-examination, he denied that fictional breaks were given to the petitioner by the department from the year 1999 upto the year 2007. Volunteered that, the petitioner herself had not been coming to work. However, he admitted that there was no correspondence of the department with the petitioner regarding her not reporting for work. He also admitted that Ex. PW1/B is a document of their department, which reflects names of some of the workers. He was not aware that any junior to the petitioner had been engaged regularly. He admitted that document Ex. Rx-1 was of their department. He also admitted that as per award Ex. Rx-2, Ruma Devi was working in the department, whose case regarding time to time termination was decided on 28.7.2015. He cannot say that the petitioner is entitled for regularization from the year 2008.

13. There is no denial of the fact that Reference No. 304/2014 titled as Smt. Ruma Devi vs. The Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar, District Mandi, H.P was decided by this Court/Tribunal on 28.7.2015. While deciding the said reference, it was held by this Court/Tribunal that the workman therein was in continuous service with the respondent from her respective dates of engagement and the breaks which were given to her by the respondent being fictional in nature shall have no effect on her seniority and continuity of service. Manifest that it is not in one odd case, but in the case of a number of workmen that such procedure had been adopted by the respondent. Why, how and under what circumstances the muster rolls were issued only for 15 to 20 days to the workman has not been clearly spelt out by the respondent either in his pleadings or in the evidence. It is the version of the respondent that on her own request the petitioner was engaged as a daily waged beldar, as per the availability of work and funds with the department. There is no cogent, convincing, strong and reliable evidence on record to substantiate this plea, except for the self serving testimony of the respondent.

14. On the other hand, the mandays chart of ten workmen Ex. Rx-1 shows that workmen, namely, Shri Prithi Pal Singh was engaged in October, 2001, Shri Ravinder Kumar in December, 2001, Shri Dalip Singh in July, 2002, Shri Gautam Ram in April, 2002, Sh. Bhawani Singh in November, 2000 and Shri Ram Dhan in February, 2003. Their names figure at serial Nos. 6 to 11 in Ex. Rx-1. A perusal of Ex. Rx-1 shows that all the aforementioned workmen were being offered muster rolls for a full month. Admittedly, even these workmen are employed in B&R Division HPPWD, Joginder Nagar. The respondent while appearing as RW1 has not explained as to why all the above-named workmen, who were junior to the petitioner, were not being given any

breaks. Indisputably, the nature of job of all these workmen was similar to that of the petitioner. Why the petitioner, who admittedly was senior to the aforesaid workmen, was not granted the muster rolls for the entire month from the month of January, 1999 upto 31.8.2007, has neither been explained nor there seems to be any plausible reason for the same. As discussed above, the reasons to that effect being obscure only go to show that the story put forth by the respondent that as adequate work and funds were not available, the petitioner was not being granted the muster rolls for the entire month is incorrect. After August, 2007 the respondent had started giving muster-roll for the entire month to the petitioner, as is evident from the substantive evidence of the petitioner. She continued working uninterruptedly but only for 15 to 20 days in a month right from the month of January, 1999 till 31.8.2007. Certain similarly situated persons, however, continued to be granted full muster roll. The respondent was either resorting to favouritism or acting in a partisan manner to the petitioner or was simply resorting to such process with an object of depriving her of the status and privileges of a permanent workman, entitling her to regularization as per the policy of the State Government. It is an act of gross discrimination which is *ex facie* borne out from the record. There can be no two opinions about it. Mere glance at the record highlights the glaring discrepancy and discrimination perpetuated by the respondent.

15. The aforesaid act of the respondent, as discussed above, is not only an 'unfair labour' practice as per the provisions of the Section 2(ra) of the Act, but is also against the provisions of Section 25-B of the Act, which stipulates that the workman shall be in 'continuous service', except because of an interruption on account of sickness authorized leave, accident, strike, which is illegal or lock out and the cessation of work which is not due to any fault on the part of the workman. The action of the respondent in not intentionally issuing muster roll for the entire month to the petitioner was not due to any fault of the petitioner. The cessation of work was caused due to the arbitrary and discriminatory attitude of the respondent. Therefore, it has to be presumed that the workman *i.e.* petitioner was in 'continuous service'. She continued serving the respondent uninterruptedly from January, 1999. The sole inference which can be drawn from the entire circumstances as discussed above is that the action of the respondent in giving fictional breaks to the petitioner and in the process disengaging her after 15 to 20 days every month from the month of January, 1999 till 31.8.2007 was illegal and against the provisions of the Act.

16. The upshot is that the petitioner was in continuous uninterrupted service with the respondent from the month of January, 1999 till 31.8.2007. The breaks given to her by the respondent were fictional in nature and they shall have no effect on her seniority and continuity in service. Her seniority shall be reckoned from the month of January, 1999.

17. These issues under discussion are accordingly decided in favour of the petitioner and against the respondent.

Issue No. 3 :

18. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the relief(s) the petitioner is found entitled to. Even otherwise, nothing has been brought to my notice by the respondent to show as to how the reference is not maintainable. The issue under discussion is accordingly decided against the respondent and in favour of the petitioner.

Issue No. 4 :

19. Not pressed.

Issue No. 5 :

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue under discussion is decided in favour of the petitioner and against the respondent.

Relief :

22. As a sequel to my findings on issues above, the instant claim petition succeeds and the same is allowed. It is held that the petitioner was in continuous uninterrupted service with the respondent from the month of January, 1999 upto 31.8.2007. The breaks given by the respondent to the petitioner from the month of January, 1999 upto 31.8.2007 were artificial/fictional in nature. This period of fictional breaks is ordered to be counted for the purpose of continuous service, except back wages. Her seniority shall be reckoned from the month of January, 1999. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of October, 2020.

Sd/-
(**YOGESH JASWAL**),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 370/2014

Date of Institution : 16.12.2014

Date of Decision : 07.10.2020

Shri Vinod Kumar s/o Shri Pyar Chand, r/o Village Passal, P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D., Joginder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Vinod Kumar, s/o Shri Pyar Chand, r/o Village Passal, P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P. during June 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. The case of the petitioner as set out in the statement of claim is that his services were engaged by the respondent in B&R Sub Division No. II, HPPWD Joginder Nagar, District Mandi, H.P. *w.e.f.* June, 1999 on muster roll and that he had worked under the Assistant Engineer, HPPWD, Sub-Division No.II, Joginder Nagar. No appointment letter was ever given to him at the time of his appointment. The muster rolls were issued to the petitioner only for 15, 18 and 20 days in a month. The respondent had given fictional breaks to the petitioner from time to time from the date of his initial engagement upto 31.8.2007. Thereafter, the services of the petitioner have been engaged continuously by the respondent. A pick and choose policy was adopted by the respondent, as some junior workers were engaged continuously, whereas the seniors, like the petitioner, were being engaged with fictional breaks to deprive them of the permanent status as per Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The principle of ‘last come first go’ was not adhered to by the respondent and persons, namely, S/Sh./Smt. Rajinder Singh, Subhash Chand, Sumer Singh, Sanjeev Kumar, Gudi Devi, Prithi Pal, Rajinder Pal, Dalip Singh, Gautam Ram, Bhawani Ram and Ram Dhan were engaged without giving them any fictional breaks. The act of the respondent was wrong, illegal and against the provisions of Sections 25-G and 25-H of the Act. The petitioner has continuously worked *w.e.f.* June, 1999 and has completed eight years of continuous service on 30.6.2007. As per the policy of the State Government, he is entitled for regularization *w.e.f.* 1.7.2007. Hence, the petition.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that the petition was bad for non joinder of necessary parties and also on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the services of the petitioner were engaged in June, 1999. The petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. The respondent’s office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning *w.e.f.* 2nd January, 2004 and after the creation of the respondent’s office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It is denied that fictional breaks were given to the petitioner by the respondent upto the year 2007. Rather, the services of the petitioner were engaged as per the availability of work and funds and on his oral requests from time to time. The respondent had been providing work to the petitioner for the whole month. Hence, it was prayed that the

petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 02.01.2020:

1. Whether time to time termination of services of the petitioner during June, 1999 to 31-08-2007 by the respondent is illegal and unjustified, as alleged? . . .*OPP*.
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.
4. Whether the claim petition is bad for non joinder of the necessary parties, as alleged? . . .*OPR*.
5. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR*.

Relief :

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Not pressed
Issue No. 5	: No
Relief	: Petition is allowed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The short and simple case of the petitioner is that the respondent had been

resorting to giving fictional breaks from the very inception upto 31.8.2007, as only muster rolls for 15 to 20 days were issued to him.

11. In this regard Sh. Vinod Kumar (petitioner) stepped into the witness box as PW1. He in his affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure has deposed that the respondent had engaged him since June, 1999 on muster rolls, but they were issued only for 15 to 20 days. The said process continued till 31.8.2007.

12. Conversely, Shri B.S. Thakur, Executive Engineer, Joginder Nagar (respondent) testified as RW1. He placed on record copy of office order as Ex. RW1/B, copy of notification as Ex. RW1/C, copy of year-wise mandays chart of the petitioner as Ex. RW1/D, copy of office order as Ex. RW1/E and copy of joining report as Ex. RW1/F. In his cross-examination, he denied that fictional breaks were given to the petitioner by the department from the year 1999 upto the year 2007. Volunteered that, the petitioner himself had not been coming to work. However, he admitted that there was no correspondence of the department with the petitioner regarding his not reporting for work. He also admitted that Ex. PW1/B is a document of their department, which reflects names of some of the workers. He was not aware that any junior to the petitioner had been engaged regularly. He admitted that as per Ex. PW1/E, Smt. Ruma Devi was also working in their department. Further, he admitted that as per Ex. PW1/F, Smt. Ruma Devi has been regularized. He cannot say that the petitioner is entitled for regularization from the year 2008.

13. There is no denial of the fact that Reference No. 304/2014 titled as Smt. Ruma Devi vs. The Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar, District Mandi, H.P. was decided by this Court/Tribunal on 28.7.2015. While deciding the said reference, it was held by this Court/Tribunal that the workman therein was in continuous service with the respondent from her respective date of engagement and the breaks which were given to her by the respondent being fictional in nature shall have no effect on her seniority and continuity of service. Manifest that it is not in one odd case, but in the case of a number of workmen that such procedure had been adopted by the respondent. Why, how and under what circumstances the muster rolls were issued only for 15 to 20 days to the workman has not been clearly spelt out by the respondent either in his pleadings or in the evidence. It is the version of the respondent that the work was made available to the petitioner as per the requirement of work and availability of funds. There is no cogent, convincing, strong and reliable evidence on record to substantiate this plea, except for the self serving testimony of the respondent.

14. On the other hand, the mandays chart of ten workmen Ex. PW1/B shows that workmen, namely, Smt. Guddi Devi was engaged in July, 2000, Shri Prithi Pal Singh in October, 2001, Shri Ravinder Kumar in December, 2001, Shri Dalip Singh in July, 2002, Shri Gautam Ram in April, 2002, Sh. Bhawani Singh in November, 2000 and Shri Ram Dhan in February, 2003. Their names figure at serial Nos. 5 to 11 in Ex. PW1/B. A perusal of Ex. PW1/B shows that all the aforesaid workmen were being offered muster rolls for a full month. Admittedly, even these workmen are employed in B&R Division HPPWD, Joginder Nagar. The respondent while appearing as RW1 has not clarified as to why all the above-named workmen, who were junior to the petitioner, were not being given any breaks. Indisputably, the nature of job of all these workmen was similar to that of the petitioner. Why the petitioner, who admittedly was senior to the aforesaid workmen, was not granted the muster rolls for the entire month from the month of June, 1999 upto 31.8.2007, has neither been explained nor there seems to be any plausible reason for the same. As discussed above, the reasons to that effect being obscure only go to show that the story put forth by the respondent that as adequate work and funds were not available, the petitioner was not being granted the muster rolls for the entire month is incorrect. After August, 2007 the respondent had started giving muster roll for the entire month to the petitioner, as is evident from the substantive evidence of the petitioner. He continued working uninterruptedly but only for 15

to 20 days in a month right from the month of June, 1999 till 31.8.2007. Certain similarly situated persons, however, continued to be granted full muster roll. The respondent was either resorting to favouritism or acting in a partisan manner to the petitioner or was simply resorting to such process with an object of depriving him of the status and privileges of a permanent workman, entitling him to regularization as per the policy of the State Government. It is an act of gross discrimination which is *ex-facie* borne out from the record. There can be no two opinions about it. Mere glance at the record highlights the glaring discrepancy and discrimination perpetuated by the respondent.

15. The aforesaid act of the respondent, as discussed above, is not only an 'unfair labour' practice as per the provisions of the Section 2(ra) of the Act, but is also against the provisions of Section 25-B of the Act, which stipulates that the workman shall be in 'continuous service', except because of an interruption on account of sickness authorized leave, accident, strike, which is illegal or lock out and the cessation of work which is not due to any fault on the part of the workman. The action of the respondent in not intentionally issuing muster roll for the entire month to the petitioner was not due to any fault of the petitioner. The cessation of work was caused due to the arbitrary and discriminatory attitude of the respondent. Therefore, it has to be presumed that the workman *i.e.* petitioner was in 'continuous service'. He continued serving the respondent uninterruptedly from the month of June, 1999. The sole inference which can be drawn from the entire circumstances as discussed above is that the action of the respondent in giving fictional breaks to the petitioner and in the process disengaging him after 15 to 20 days every month from the month of June, 1999 till 31.8.2007 was illegal and against the provisions of the Act.

16. The upshot is that the petitioner was in continuous uninterrupted service with the respondent from the month of June, 1999 till 31.8.2007. The breaks given to him by the respondent were fictional in nature and they shall have no effect on his seniority and continuity in service. His seniority shall be reckoned from the month of June, 1999.

17. These issues under discussion are accordingly decided in favour of the petitioner and against the respondent.

Issue No. 3 :

18. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the relief(s) the petitioner is found entitled to. Even otherwise, nothing has been brought to my notice by the respondent to show as to how the reference is not maintainable. The issue under discussion is accordingly decided against the respondent and in favour of the petitioner.

Issue No. 4 :

19. Not pressed.

Issue No. 5 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82*, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter

of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue under discussion is decided in favour of the petitioner and against the respondent.

Relief :

22. As a sequel to my findings on issues above, the instant claim petition succeeds and the same is allowed. It is held that the petitioner was in continuous uninterrupted service with the respondent from the month of June, 1999 upto 31.8.2007. The breaks given by the respondent to the petitioner from the month of June, 1999 upto 31.8.2007 were artificial/fictional in nature. This period of fictional breaks is ordered to be counted for the purpose of continuous service, except back wages. His seniority shall be reckoned from the month of June, 1999. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of October, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 21/2015

Date of Institution : 13.01.2015

Date of Decision : 08.10.2020

Shri Pyar Chand s/o Shri Mangat Ram, r/o Village Passal, P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D., Joginder Nagar, District Mandi, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Pyar Chand, s/o Shri Mangat Ram, r/o Village Passal, P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P. during August 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. The case of the petitioner as set out in the statement of claim is that his services were engaged by the respondent in B&R Sub Division No. II, HPPWD Joginder Nagar, District Mandi, H.P. *w.e.f.* August, 1998 on muster roll and that he had worked under the Assistant Engineer, HPPWD, Sub Division No. II, Joginder Nagar. No appointment letter was ever given to him at the time of his appointment. The muster rolls were issued to the petitioner only for 15, 18 and 20 days in a month. The respondent had given fictional breaks to the petitioner from time to time from the date of his initial engagement upto 31.8.2007. Thereafter, the services of the petitioner have been engaged continuously by the respondent. A pick and choose policy was adopted by the respondent, as some junior workers were engaged continuously, whereas the seniors, like the petitioner, were being engaged with fictional breaks to deprive them of the permanent status as per Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The principle of ‘last come first go’ was not adhered to by the respondent and persons, namely, S/Sh./Smt. Rajinder Singh, Subhash Chand, Sumer Singh, Sanjeev Kumar, Gudi Devi, Prithi Pal, Rajinder Pal, Dalip Singh, Gautam Ram, Bhawani, Ram and Ram Dhan were engaged without giving them any fictional breaks. The act of the respondent was wrong, illegal and against the provisions of Sections 25-G and 25-H of the Act. The petitioner has continuously worked *w.e.f.* August, 1998 and has completed eight years of continuous service on 31.7.2006. As per the policy of the State Government, he is entitled for regularization *w.e.f.* 1.8.2006. Hence, the petition.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that the petition was bad for non joinder of necessary parties and also on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the services of the petitioner were engaged in August, 1998. The petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. The respondent’s office was created in the month of January, 2004 *vide* notification dated 9th December, 2003. The office started functioning *w.e.f.* 2nd January, 2004 and after the creation of the respondent’s office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It is denied that fictional breaks were given to the petitioner by the respondent upto the year 2007. Rather, the services of the petitioner were engaged as per the availability of work and funds and on his oral requests from time to time. The respondent had been providing work to the petitioner for the whole month. Hence, it was prayed that the petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination

and adjudication by this Court vide order dated 02.01.2020:

1. Whether time to time termination of services of the petitioner during August, 1998 to 31-08-2007 by the respondent is illegal and unjustified, as alleged? . . .*OPP*.
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.
4. Whether the claim petition is bad for non joinder of the necessary parties, as alleged? . . .*OPR*.
5. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR*.

Relief :

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|-------------|--|
| Issue No. 1 | : Yes |
| Issue No. 2 | : Discussed |
| Issue No. 3 | : No |
| Issue No. 4 | : Not pressed |
| Issue No. 5 | : No |
| Relief | : Petition is allowed as per the operative portion of the Award. |

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The short and simple case of the petitioner is that the respondent had been resorting to giving fictional breaks from the very inception upto 31.8.2007, as only muster rolls for 15 to 20 days were issued to him.

11. In this regard Sh. Pyar Chand (petitioner) stepped into the witness box as PW1. He in his affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure has

deposed that the respondent had engaged him since August, 1998 on muster rolls, but they were issued only for 15 to 20 days. The said process continued till 31.8.2007.

12. Conversely, Shri B. S. Thakur, Executive Engineer, Joginder Nagar (respondent) testified as RW1. He placed on record copy of office order as Ex. RW1/B, copy of notification as Ex. RW1/C, copy of year-wise mandays chart of the petitioner as Ex. RW1/D, copy of office order as Ex. RW1/E and copy of joining report as Ex. RW1/F. In his cross-examination, he denied that fictional breaks were given to the petitioner by the department from the year 1998 upto the year 2007. Volunteered that, the petitioner himself had not been coming to work. However, he admitted that there was no correspondence of the department with the petitioner regarding his not reporting for work. He also admitted that Ex. PW1/B is a document of their department, which reflects names of some of the workers. He was not aware that any junior to the petitioner had been engaged regularly. He admitted that as per Ex. PW1/E, Smt. Ruma Devi was also working in their department. Further, he admitted that as per Ex. PW1/F, Smt. Ruma Devi has been regularized. He cannot say that the petitioner is entitled for regularization from the year 2008.

13. There is no denial of the fact that Reference No. 304/2014 titled as Smt. Ruma Devi vs. The Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar, District Mandi, H.P. was decided by this Court/Tribunal on 28.7.2015. While deciding the said reference, it was held by this Court/Tribunal that the workman therein was in continuous service with the respondent from her respective date of engagement and the breaks which were given to her by the respondent being fictional in nature shall have no effect on her seniority and continuity of service. Manifest that it is not in one odd case, but in the case of a number of workmen that such procedure had been adopted by the respondent. Why, how and under what circumstances the muster rolls were issued only for 15 to 20 days to the workman has not been clearly spelt out by the respondent either in his pleadings or in the evidence. It is the version of the respondent that the work was made available to the petitioner as per the requirement of work and availability of funds. There is no cogent, convincing, strong and reliable evidence on record to substantiate this plea, except for the self-serving testimony of the respondent.

14. On the other hand, the mandays chart of ten workmen Ex. PW1/B shows that workmen, namely, Shri Sanjeev Kumar was engaged in 1999, Smt. Guddi Devi in July, 2000, Shri Prithi Pal Singh in October, 2001, Shri Ravinder Kumar in December, 2001, Shri Dalip Singh in July, 2002, Shri Gautam Ram in April, 2002, Sh. Bhawani Singh in November, 2000 and Shri Ram Dhan in February, 2003. Their names figure at serial Nos. 4 to 11 in Ex. PW1/B. A perusal of Ex. PW1/B shows that all the aforementioned workmen were being offered muster rolls for a full month. Admittedly, even these workmen are employed in B&R Division HPPWD, Joginder Nagar. The respondent while appearing as RW1 has not clarified as to why all the above-named workmen, who were junior to the petitioner, were not being given any breaks. Indisputably, the nature of job of all these workmen was similar to that of the petitioner. Why the petitioner, who admittedly was senior to the aforesaid workmen, was not granted the muster rolls for the entire month from the month of August, 1998 upto 31.8.2007, has neither been explained nor there seems to be any plausible reason for the same. As discussed above, the reasons to that effect being obscure only go to show that the story put forth by the respondent that as adequate work and funds were not available, the petitioner was not being granted the muster rolls for the entire month is incorrect. After August, 2007 the respondent had started giving muster roll for the entire month to the petitioner, as is evident from the substantive evidence of the petitioner. He continued working uninterruptedly but only for 15 to 20 days in a month right from the month of August, 1998 till 31.8.2007. Certain similarly situated persons, however, continued to be granted full muster roll. The respondent was either resorting to favouritism or acting in a partisan manner to the petitioner or was simply resorting to such process with an object of depriving him of the status and privileges of a permanent workman, entitling him to regularization as per the policy of the State Government. It is

an act of gross discrimination which is *ex facie* borne out from the record. There can be no two opinions about it. Mere glance at the record highlights the glaring discrepancy and discrimination perpetuated by the respondent.

15. The aforesaid act of the respondent, as discussed above, is not only an 'unfair labour' practice as per the provisions of the Section 2(ra) of the Act, but is also against the provisions of Section 25-B of the Act, which stipulates that the workman shall be in 'continuous service', except because of an interruption on account of sickness authorized leave, accident, strike, which is illegal or lock out and the cessation of work which is not due to any fault on the part of the workman. The action of the respondent in not intentionally issuing muster roll for the entire month to the petitioner was not due to any fault of the petitioner. The cessation of work was caused due to the arbitrary and discriminatory attitude of the respondent. Therefore, it has to be presumed that the workman *i.e.* petitioner was in 'continuous service'. He continued serving the respondent uninterruptedly from the month of August, 1998. The sole inference which can be drawn from the entire circumstances as discussed above is that the action of the respondent in giving fictional breaks to the petitioner and in the process disengaging him after 15 to 20 days every month from the month of August, 1998 till 31.8.2007 was illegal and against the provisions of the Act.

16. The upshot is that the petitioner was in continuous uninterrupted service with the respondent from the month of August, 1998 till 31.8.2007. The breaks given to him by the respondent were fictional in nature and they shall have no effect on his seniority and continuity in service. His seniority shall be reckoned from the month of August, 1998.

17. These issues under discussion are accordingly decided in favour of the petitioner and against the respondent.

Issue No. 3 :

18. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the relief(s) the petitioner is found entitled to. Even otherwise, nothing has been brought to my notice by the respondent to show as to how the reference is not maintainable. The issue under discussion is accordingly decided against the respondent and in favour of the petitioner.

Issue No. 4 :

19. Not pressed.

Issue No. 5 :

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by

the vice of delay and laches. Hence, this issue under discussion is decided in favour of the petitioner and against the respondent.

Relief :

22. As a sequel to my findings on issues above, the instant claim petition succeeds and the same is allowed. It is held that the petitioner was in continuous uninterrupted service with the respondent from the month of August, 1998 upto 31.8.2007. The breaks given by the respondent to the petitioner from the month of August, 1998 upto 31.8.2007 were artificial/fictional in nature. This period of fictional breaks is ordered to be counted for the purpose of continuous service, except back wages. His seniority shall be reckoned from the month of August, 1998. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of October, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 244/2016

Date of Institution : 2 1.04.2016

Date of Decision : 26.10.2020

Shri Anil Kumar s/o Shri Tek Chand, r/o Village Behi, P.O. Koti, Tehsil & District Chamba, H.P.

Versus

1. The Employer/Managing Director, M/s GVK Emergency Management and Research Institute, Dharampur, District Solan, H.P. (Principal Employer).
2. The Managing Director, M/s Adecco Flexione Workforce Solutions Private Limited, C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali, Punjab (Contractor Company) . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For Respondent No. 1 : Sh. Rajat Sahotra, Adv.

For Respondent No. 2 : Sh. Manish Katoch, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Anil Kumar s/o Shri Tek Chand, r/o Village Behi, P.O. Koti, Tehsil & District Chamba, H.P. w.e.f. 10-02-2014 by (i) the Employer/ Managing Director, M/s GVK Emergency Management and Research Institute, Dharampur, District Solan, H.P. (Principal Employer) (ii) the Managing Director, M/s Adecco Flexione Workforce Solutions Private Limited, C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali, Punjab. (Contractor Company), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex-parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to

be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex-parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 10.02.2014 by the respondents was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of October, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 114/2016

Date of Institution : 04.03.2016

Date of Decision : 26.10.2020

Shri Om Prakash s/o Shri Pratap Singh, r/o Village Chamera, P.O. Janghi, Tehsil & District
Chamba, H.P. *Petitioner.*

Versus

3. The Employer/Managing Director, M/s GVK Emergency Management and Research Institute, Dharampur, District Solan, H.P. (Principal Employer).
4. The Managing Director, M/S Adecco Flexione Workforce Solutions Private Limited, C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali, Punjab (Contractor Company) . . . Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For Respondent No. 1 : Sh. Rajat Sahotra, Adv.

For Respondent No. 2 : Sh. Manish Katoch, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Om Prakash s/o Shri Pratap Singh, r/o Village Chamera, P.O. Janghi, Tehsil & District Chamba, H.P. *w.e.f.* 31-08-2013 by (i) the Employer/Managing Director, M/s GVK Emergency Management and Research Institute, Dharampur, District Solan, H.P. (Principal Employer) (ii) the Managing Director, M/s Adecco Flexione Workforce Solutions Private Limited, C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali, Punjab. (Contractor Company), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex-parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court,

Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex-parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 31.8.2013 by the respondents was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of October, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 75/2020

Date of Institution : 10.09.2020

Date of Decision : 28.10.2020

Shri Mansha Ram s/o Shri Badru, r/o Village Niharkhan Basla, P.O. Brahampukhar,
Tehsil Sadar, District Bilaspur, H.P. . *Petitioner.*

Versus

The Employer, M/s T.R. Enterprises Dealers of Ashoka Leyland Limited, Vinayakghat,
National Highway, Brahampukhar, Tehsil Sadar, District Bilaspur, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Sh. Kumar Karan, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Mansha Ram s/o Shri Badru, r/o Village Niharkhan Basla, P.O. Brahampukhar, Tehsil Sadar, District Bilaspur, H.P. during October, 2017 (as alleged by workman) by the Employer, M/s T.R. Enterprises Dealers of Ashoka Leyland Limited Vinayakghat on National Highway, Brahampukhar, Tehsil Sadar, District Bilaspur, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex-parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central

Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services in the month of October, 2017 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of October, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 03/2018

Date of Institution : 19.02.2018

Date of Decision : 28.10.2020

Smt. Savitri Devi w/o Late Shri Bansi Lal, r/o Village Ward No.4, Una, through Shri Vinod Kumar, Vikas Nagar, Near DAV Centenary Senior Secondary School, Una, District Una, H.P.
. .Petitioner.

Versus

The Principal, D.A.V. Centenary Public School Una, Tehsil and District Una, H.P.
. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Sh. Rohit Joshi, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Savitri Devi w/o Late Shri Bansi Lal, (employed as sweeper) r/o Ward No. 4, Una, through Shri Vinod Kumar, Vikas Nagar, Near DAV Centenary Senior Secondary School, Una, District Una, H.P. during September, 2016 by the Principal D.A.V. Centenary Public School Una, Tehsil & District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/Management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed/engaged as a peon by the respondent *w.e.f.* 4.1.2020 and that she had worked continuously without any break. The respondent has paid to her salary of Rs. 5,500/- per month. She had performed her duties diligently, honestly and to the best of her ability to the satisfaction of all. Her services were orally terminated by the respondent on 30.9.2016. Several requests were

made by her for her re-engagement, but without success. Persons junior to her were retained by the respondent. Even a new/fresh hand had been engaged by the respondent as a peon in her place. The respondent had completely ignored the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner is having no source of income and is unemployed since the date of her disengagement. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply alleging therein that the services of the petitioner were engaged as a sweeper in the School on rate contract basis. She had never been engaged as a peon. The petitioner had been creating a bad atmosphere in the school campus by claiming to be possessed of abnormal powers and by indulging in occult activities. Written complaints have been received from the teachers as well as class-IV employees of the school against the petitioner. Since the petitioner was engaged on rate contract basis, her services were liable to be terminated at any time without giving any notice. The petitioner is not fit to be kept in an educational institute on account of her act and conduct. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 15.7.2019:

1. Whether termination of the services of the petitioner by the respondent during September, 2016 is/was illegal and unjustified, as alleged? . . . *OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . *OPP*.

Relief :

6. Arguments of the learned Counsel for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

8. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

9. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent in September, 2016 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been

engaged as a peon by the respondent *w.e.f.* 04.1.2010. It was also her claim that she had continuously worked thereafter without any breaks in service. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. Persons junior to her were retained in service by the respondent. New/fresh hand had also been engaged in her place. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

10. However, when the case was listed for the evidence of the petitioner today *i.e.* 28.10.2020, neither she nor her counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex-parte*.

11. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

12. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

13. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

14. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

15. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to

imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

16. In the instant case, neither the petitioner nor her counsel had put in appearance before this Tribunal today *i.e.* 28.10.2020. In these circumstances, the Tribunal can proceed and pass *ex-parte* award on its merits.

17. Since, it is disputed by the respondent that the services of the petitioner had been engaged as a peon, so firstly it was required of the petitioner to prove on record that she had been engaged by the respondent as a peon and then to establish on record, as per the reference, that the termination of her services in September, 2016 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but her allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by her. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Relief :

18. In the light of what has been discussed hereinabove, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of October, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 37/2017

Date of Institution : 07.1.2017

Date of Decision : 29.10.2020

Shri Pawan Kumar s/o Shri Parkash Chand, r/o Village Mainyara, P.O. Pahra, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalya, Palampur, District Kangra, H.P.
2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhyalya,

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajat Chaudhary, Adv.

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Pawan Kumar s/o Shri Parkash Chand, r/o Village Maniyara, P.O. Pahra, Tehsil Palampur, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. during year, 2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Agro Forestry department *w.e.f.* 23.6.2006 and he continued to work as such upto 01.9.2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Lab/Animal Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Live Stock Farm department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto the year 2010. The petitioner was also a member of the union and reference had been made to this court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2010 was

withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the supervisions and control of project investigator, and he had only been making payment to the petitioner from the year 2005 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Fodder department from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis from the year 2006 upto the year 2009, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on

muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondents are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondents university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondents university at his own will. He had worked as a contractor from the month of August, 2006. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner did not come to attend his work at his own, as he was not interested to work as a labourer. The Director of Research of the respondents had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. From the year 2006 upto the year 2009 the petitioner had raised bills as a contractor. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled to salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 24.6.2019:

1. Whether the verbal termination of the services of the petitioner by the respondents during the year, 2010 is/was illegal and unjustified as alleged? ..*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
3. Whether the claim petition is not maintainable, as alleged? ..*OPR.*
4. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? ..*OPR.*

5. Whether this Court has no jurisdiction to try the present case, as alleged? . .OPR.
6. Whether the petitioner is/was not daily paid labourer of the respondents, as alleged? . .OPR.
7. Whether the petitioner has not approached the Court with clean hands and has suppressed true and material facts from this Court, as alleged? ..OPR.

Relief :

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel for the respondents, as per her statement made at bar did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Not pressed

Issue No. 6 : Yes

Issue No. 7 : Yes

Relief : Claim petition dismissed *vide* operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 6 :

9. Being interlinked and to avoid repetition, all these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that he was engaged as a daily waged worker by the respondents *w.e.f.* 23.6.2006 and had continuously worked as such till 01.9.2010. A plea was also taken to the effect by the petitioner that his services were illegally and unlawfully terminated by the respondents in the year 2010, without adhering to the principles of the Act. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence, as the same were refuted by the respondents.

11. The first question which arises for consideration, as per the arguments, is whether the

petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

12. At the risk of repetition, as in the case on hand it is asserted by the petitioner that he was a workman of the respondents, being appointed on daily waged basis and which fact had been denied by the respondents, therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. Neither any oral nor documentary evidence has been led on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll.

13. It was also claimed in the statement of claim by the petitioner that he had worked continuously with the respondents from the year 2006 upto the year 2010, without any breaks and as such had been completing 240 days in each calendar year.

14. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

15. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2010. No such record is there on the file to establish that the petitioner had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

16. It is not the case of the petitioner that after his alleged disengagement, his juniors had been retained and that new/fresh hands had also been engaged by the respondents. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

17. In view of the above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll has been filed nor any seniority list of daily wagers showing his name has been placed and exhibited on record by the petitioner. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues No. 1 and 2 are decided against the petitioner, while issue No. 6 is decided in favour of the respondents.

Issues No. 3, 4 & 7 :

18. Taking in to account my findings on issues No. 1, 2 and 6 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in favour of the respondents.

Issue No. 5 :

19. Not pressed.

Relief :

20. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of October, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 89/2020

Date of Institution : 11.09.2020

Date of Decision : 29.10.2020

Shri Sumit Singh s/o Shri Sukhdev Singh, r/o VPO Dharamshala Mahanta, Ward No. 4, Tehsil Amb, District Una, H.P. . *Petitioner.*

Versus

The Employer/Manager, M/s Tigaksha Metallica Private Limited, Ram Nagar, Industrial Area, Gagret, District Una, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Sh. N.L. Kaundal, AR

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Sunit Singh s/o Shri Sukhdev Singh, r/o V.P.O. Dharamshala Mahanta, Ward No.4, Tehsil Amb, District Una, H.P. *w.e.f.* 08-07-2020 by the Employer/Manager, M/s Tigaksha Metalics Private Limited, Ram Nagar, Industrial Area, Gagret, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex-parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex-parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 08-07-2020 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of October, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 90/2020

Date of Institution : 11.09.2020

Date of Decision : 29.10.2020

Shri Vikas Thakur s/o Shri Ishwar Singh, r/o Village Mandwara, P.O. Marwari, Tehsil Ghanari, District Una, H.P. . .Petitioner.

Versus

The Employer/Manager, M/s Tigaksha Metalics Private Limited, Ram Nagar, Industrial Area, Gagret, District Una, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Sh. N.L. Kaundal, AR

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Vikas Thakur s/o Shri Ishwar Singh r/o Village Mandwara, P.O. Marwari, Tehsil Ghanari, District Una, H.P. *w.e.f.* 08-07-2020 by the Employer/Manager, M/s Tigaksha Metalics Private Limited, Ram Nagar, Industrial Area, Gagret, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex-parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-*

parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 08-07-2020 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of October, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 45/2020
Date of Institution : 02.03.2020
Date of Decision : 29.10.2020

Shri Mohamad Aslam Khan s/o Shri Karam Deen, r/o Village Biru Patela, P.O. Lad Bharol,
Tehsil Joginder Nagar, District Mandi, H.P.*Petitioner.*

Versus

The Director, M/s Cosilight India Telecom Private Limited, Village and Post Office Dhamandri, Tehsil and District Una, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Sh. Neeraj Bhatnagar, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Mohamad Aslam Khan s/o Shri Karam Deen r/o Village Biru Patela, P.O. Lad Bharol, Tehsil Joginder Nagar, District Mandi, H.P. by the Director, M/s Cosilight India Telecom Private Limited, Village and Post Office Dhamandri, Tehsil and District Una, H.P. *w.e.f.* 22.12.2018 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employers?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex-parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to

be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 22.12.2018 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of October, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

GENERAL ADMINISTRATION DEPARTMENT
B-Section

NOTIFICATION

Shimla-2, the 1st Feb, 2021

No.:GAD-B(A)1-9/2018 –I.—In continuation to this department notification of even no. dated 7-08-2021 the Governor, Himachal Pradesh is pleased to notify that administrative boundaries of all the Districts, Sub-Divisions, Tehsils, Sub-Tehsils, Blocks, Villages, Towns, Wards etc. shall now stand frozen with effect from 1st April, 2021 instead of 1st January, 2021 in view of prevailing conditions due to COVID-19, till Census is over.

By order,
Anil Kumar Khachi
Chief Secretary.

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसील लाहौल, जिला लाहौल एवं स्पिति,
हिमाचल प्रदेश**

ब मुकदमा :

थुपतन दोरजे पुत्र श्री धर्मू, निवासी गांव व डाकघर कोकसर, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0)।

बनाम

आम जनता

विषय.—प्रार्थना—पत्र बराए राजस्व अभिलेख में नाम दुरुस्ती करने बारे।

थुपतन दोरजे पुत्र श्री धर्मू, निवासी गांव व डाकघर कोकसर, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0) ने एक आवेदन पत्र शपथ—पत्र सहित इस अदालत में प्रस्तुत किया है जिसमें मुताबिक आधार कार्ड, परिवार रजिस्टर नकल, वोटर कार्ड इत्यादि में थुपतन दोरजे दर्ज है, जोकि सही व दुरुस्त है। लेकिन भू—राजस्व अभिलेख महाल कोकसर, तहसील लाहौल, जिला लाहौल एवं स्पिति में थुकतन है। जिस कारण उन्हें भारी परेशानी का सामना करना पड़ रहा है। अब प्रार्थी राजस्व विभाग में थुकतन दोरजे के स्थान पर थुपतन दोरजे दर्ज कराना चाहता है।

अतः इस नोटिस द्वारा आम जनता एवं सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि किसी को उपरोक्त थुकतन दोरजे के नाम को दुरुस्त करके थुपतन दोरजे दर्ज करने में कोई उजर व एतराज हो तो इस अदालत में दिनांक 12-02-2021 तक असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ—पत्र व अन्य दस्तावेजों के आधार पर प्रार्थी का नाम राजस्व अभिलेख महाल कोकसर में थुपतन दोरजे दुरुस्त करने के आदेश पारित कर दिए जायेंगे।

आज दिनांक 12-01-2021 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी, तहसील लाहौल,
जिला लाहौल एवं स्पिति, हिमाचल प्रदेश।

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसील लाहौल, जिला लाहौल एवं स्पिति,
हिमाचल प्रदेश**

ब मुकद्दमा :

सोनम डोलमा पत्नि श्री छोझाल, निवासी गांव व डाकघर प्यूकर, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0)।

बनाम

आम जनता

विषय.—प्रार्थना—पत्र बराए राजस्व अभिलेख में नाम दुरुस्ती करने बारे।

श्रीमती सोनम डोलमा पत्नि श्री छोझाल, निवासी गांव व डाकघर प्यूकर, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0) ने एक आवेदन पत्र शपथ—पत्र सहित इस अदालत में प्रस्तुत किया है जिसमें मुताबिक आधार कार्ड, परिवार रजिस्टर नकल, वोटर कार्ड इत्यादि में सोनम डोलमा पुत्री सोनम दर्ज है। जोकि सही व दुरुस्त है। लेकिन भू—राजस्व अभिलेख महाल प्यूकर, तहसील लाहौल, जिला लाहौल एवं स्पिति में डोलमा पुत्री सोनम दर्ज है। जिस कारण उन्हें भारी परेशानी का सामना करना पड़ रहा है। अब प्रार्थिया राजस्व विभाग में डोलमा पुत्री सोनम के स्थान पर सोनम डोलमा पुत्री सोनम दर्ज कराना चाहती है।

अतः इस नोटिस द्वारा आम जनता एवं सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि किसी को उपरोक्त डोलमा पुत्री सोनम के नाम को दुरुस्त करके सोनम डोलमा पुत्री सोनम दर्ज करने में कोई उजर व एतराज हो तो वह इस अदालत में दिनांक 12-02-2021 तक असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ—पत्र व अन्य दस्तावेजों के आधार पर प्रार्थिया का नाम राजस्व अभिलेख महाल प्यूकर में सोनम डोलमा पुत्री सोनम दुरुस्त करने के आदेश पारित कर दिए जायेंगे।

आज दिनांक 12-01-2021 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—

सहायक समाहर्ता प्रथम श्रेणी, तहसील लाहौल,
जिला लाहौल एवं स्पिति, हिमाचल प्रदेश।

**ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसील लाहौल, जिला लाहौल एवं स्पिति,
हिमाचल प्रदेश**

ब मुकद्दमा :

छेपेल पुत्र श्री मीफम, निवासी गांव व डाकघर दारचा सूमदो, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0)।

बनाम

आम जनता

विषय.—प्रार्थना—पत्र बराए राजस्व अभिलेख में नाम दुरुस्ती करने बारे।

छेपेल पुत्र श्री मीफम, निवासी गांव व डाकघर दारचा सूमदो, तहसील लाहौल, जिला लाहौल एवं स्पिति (हि0 प्र0) ने एक आवेदन पत्र शपथ—पत्र सहित इस अदालत में प्रस्तुत किया है जिसमें मुताबिक राशन

कार्ड, परिवार रजिस्टर नकल, वोटर कार्ड इत्यादि में छेपेल दर्ज है। जोकि सही व दुरुस्त है। लेकिन भू-राजस्व अभिलेख महाल दारचा सूमदो, तहसील लाहौल, जिला लाहौल एवं स्पिति में छेपेल दर्ज है। जिस कारण उन्हें भारी मानसिक परेशानी का सामना करना पड़ रहा है। अब प्रार्थी राजस्व विभाग में छेपेल के स्थान पर छेपेल दर्ज कराना चाहता है।

अतः इस नोटिस द्वारा आम जनता एवं सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि किसी को उपरोक्त छेपेल के नाम को दुरुस्त करके छेपेल दर्ज करने में कोई उजर व एतराज हो तो इस अदालत में दिनांक 12-02-2021 तक असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ-पत्र व अन्य दस्तावेजों के आधार पर प्रार्थी का नाम राजस्व अभिलेख महाल दारचा सूमदो में छेपेल दुरुस्त करने के आदेश पारित कर दिए जायेंगे।

आज दिनांक 12-01-2021 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी, तहसील लाहौल,
जिला लाहौल एवं स्पिति, हिमाचल प्रदेश।

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Bangana, District Una,
Himachal Pradesh**

In the matter of :

1. Sh. Roop Singh s/o Sh. Raj Kumar, r/o Village Chouli, P.O. Sohari, Tehsil Bangana, District Una (H.P.).
2. Santosh Devi d/o Sh. Fumman Singh, r/o Village Polian Beet, Tehsil Haroli, District Una (H.P.) . . Applicants.

Versus

General Public

Subject.—Application for the registration of Marriage under section 15 of the Special Marriage Act, 1954 (H.P.).

Sh. Roop Singh s/o Sh. Raj Kumar, r/o Village Chouli, P.O. Sohari, Tehsil Bangana, District Una (H.P.) and Santosh Devi d/o Sh. Fumman Singh, r/o Village Polian Beet, Tehsil Haroli, District Una (H.P.) at present w/o Sh. Roop Singh s/o Sh. Raj Kumar, r/o Village Chouli, P.O. Sohari, Tehsil Bangana, District Una (H.P.) have filed an application alongwith affidavits in the court of undersigned under section 15 of the Special Marriage Act, 1954 (H.P.) that they have solemnized their marriage on 20-03-2020 according to Hindu rites and customs at Mata Jamasni Devi Mandir, Sarian, Tehsil Bangana, District Una (H.P.) and they are living together as husband and wife since then. Hence, their marriage may be registered under section 15 of the Special Marriage Act, 1954 (H.P.). Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 15-02-2021 after that no objection will be entertained and marriage will be registered.

Issued today on 4th January, 2020 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Bangana, District Una, Himachal Pradesh.*

ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता (द्वितीय श्रेणी), उप-तहसील दुलैहड़,
जिला ऊना (हि0 प्र0)

(नोटिस जेरे आदेश 5, नियम 20, सी0पी0सी0)

श्री कमलकिशोर दुर्गाजी जाट पुत्र श्री दुर्गा दास पुत्र श्री तोता, वासी महाल व मौजा छेत्रां,
उप-तहसील दुलैहड़, जिला ऊना (हि0 प्र0)।

बनाम

आम जनता

दरखास्त बमुराद दुरुस्ती नाम राजस्व रिकार्ड महाल व मौजा छेत्रां, उप-तहसील दुलैहड़, जिला ऊना
(हि0 प्र0)।

श्री कमलकिशोर दुर्गाजी जाट पुत्र श्री दुर्गा दास पुत्र श्री तोता, वासी महाल व मौजा छेत्रां,
उप-तहसील दुलैहड़, जिला ऊना (हि0 प्र0) ने इस न्यायालय में आवेदन-पत्र दुरुस्ती नाम प्रस्तुत किया है कि
राजस्व रिकार्ड महाल व मौजा छेत्रां में उसका नाम कमल देव पुत्र दुर्गा दास पुत्र तोता गलत दर्ज हुआ है।
जिसकी दुरुस्ती करके राजस्व रिकार्ड महाल व मौजा छेत्रां में उसका नाम कमल देव पुत्र दुर्गा दास पुत्र तोता
की बजाए कमल देव उपनाम कमलकिशोर दुर्गाजी जाट पुत्र श्री दुर्गा दास पुत्र श्री तोता किया जावे।

अतः इस इशतहार के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को
दुरुस्ती बारे कोई आपत्ति हो तो वह अपना उजर/एतराज लिखित या मौखिक तौर पर इस न्यायालय में
निर्धारित तारीख पेशी दिनांक 15-02-2021 को प्रातः 10.00 बजे तक असालतन/वकालतन प्रस्तुत कर
सकता है। निर्धारित तारीख पेशी तक उजर प्राप्त न होने की सूरत में एकतरफा कार्यवाही अमल में लाई
जाकर नाम दुरुस्ती बारे आदेश पारित कर दिए जाएंगे। निर्धारित तारीख पेशी के उपरान्त कोई भी उजर
काबिले समायत न होगा।

आज हस्ताक्षर मेरे व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/-

नायब तहसीलदार एवं सहायक समाहर्ता (द्वितीय श्रेणी),
उप-तहसील दुलैहड़, जिला ऊना (हि0 प्र0)।

CHANGE OF NAME

I, Arjun Agarwaal s/o Sh. Sunil Kumar Aggarwal, resident of Village Bara, P.O. Kumarhatti, Tehsil & District Solan (H. P.)-173229 wish to state that I have changed spellings of my name from Arjun Aggarwal to Arjun Agarwaal.

ARJUN AGARWAAL,
s/o Sh. Sunil Kumar Aggarwal, resident of Village Bara,
P.O. Kumarhatti, Tehsil & District Solan (H. P.).

नाम परिवर्तन

मैं, सूरज कुमार सुपुत्र श्री कुलदीप कुमार, निवासी गांव ठाकुरद्वारा, डाकघर हलोग, धामी, तहसील धामी, जिला शिमला, हिमाचल प्रदेश घोषणा करता हूं कि मेरे आधार कार्ड व पैन कार्ड में मेरे पिता जी का नाम रीतु राज गलत दर्ज हुआ है जिसे दुरुस्त करके कुलदीप कुमार किया जाए। सम्बन्धित दस्तावेज में इसे दुरुस्त किया जाए।

सूरज कुमार
सुपुत्र श्री कुलदीप कुमार, निवासी गांव ठाकुरद्वारा,
डाकघर हलोग, धामी, तहसील धामी,
जिला शिमला, हिमाचल प्रदेश।

